



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 175136

PRELIMINARY RECITALS

Pursuant to a petition filed June 21, 2016, under Wis. Stat., §49.45(5), to review a decision by the Northern IM Consortium to recover Medical Assistance (MA), a hearing was held on August 10, 2016, by telephone.

The issue for determination is whether the agency correctly determined an MA overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Northern IM Consortium
10610 Main St., Suite 224
Hayward, WI 54843

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner applied for BadgerCare Plus (BC+) MA on March 11, 2014, reporting a [REDACTED] mailing address. He reported that he was unemployed with no income. On April 14, 2014 the county agency sent petitioner a notice that he was eligible for BC+ effective April 1, 2014, with no premium. The notice informed petitioner that he needed to report to the agency if his income rose above \$972.50 in a month. It was sent to the [REDACTED] address.

3. Petitioner reported an address change to [REDACTED] on April 27, 2014, and on May 1 the agency sent petitioner a notice to the new address telling him that his case had been transferred to the Northern IM Consortium.
4. Petitioner obtained a job with [REDACTED] in June, 2014. In July his income was \$2,200. He did not report the income to the income maintenance agency.
5. Petitioner continued to receive BC+ until the end of March, 2015, when unemployment compensation was entered into the state agency system and put him over the BC+ income limit. Although petitioner did not use it for medical appointments, the MA program paid monthly HMO capitation fees. Petitioner's job ended in February, 2015.
6. On June 7, 2016 the agency sent petitioner a notice telling him that he was overpaid \$2,163.58 in MA payments from September, 2014 through February, 2015 because he failed to report increased income, claim no. [REDACTED]. The overpayment was for the HMO capitation fees paid during those months.
7. Petitioner did not receive the BC+ eligibility notice in April, 2014 because his then-roommate threw his mail away. He did not receive the notice of agency transfer after doing the address change because he was asked to leave that address within three days of moving there. He received no mail from the BC+ agencies until he received the overpayment notice.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

As of April 1, 2014 all childless adults became eligible for BC+ but with an income limit of 100% of the FPL, which, for a one-person household was \$972.50 in 2014 and 2015. See Wis. Stat., §49.471(4)(a)4.b

for the new law, and the MA Handbook, Appendix 50.1 for the limit. BC+ policy requires recipients to report a change by the tenth of the month following the month income rose above the eligibility threshold, and the change becomes effective the next month. Handbook, App. 27.3. Thus petitioner's income rose above \$972.50 in July, 2014, and he should have reported the change by August 10. BC+ thus would have closed September 1, 2014. All MA payments after that date are considered overpayments through February, 2015. Petitioner would have become eligible for BC+ in March, 2015 after his job ended in February and before the unemployment started up.

Petitioner testified that it is unfair to make him repay the BC+ payments because he did not know that he ever was eligible. He testified credibly that he did not receive the notice of eligibility or the notice of the change in agency. He testified that he paid cash for doctor appointments and prescriptions because he did not know about his eligibility.

Nevertheless, although I fully understand petitioner's frustration, I nevertheless must uphold the overpayment. The overpayment did not result from agency error. To put it harshly, it resulted from petitioner's failure to follow up on his application. The agency cannot be faulted because petitioner's roommates did not give him his mail and because he did not inquire about the status of his application or eligibility.

If the overpayment was imposed correctly, the Division of Hearings and Appeals does not have authority to rescind it due to the recipient having a form of good cause. I am limited to finding that the overpayment was due to client or agency error, and clearly it was not agency error in this case.

CONCLUSIONS OF LAW

The agency correctly determined an MA overpayment resulting from petitioner failing to report increased income after he began to receive BC+.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of August, 2016

\s_____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 16, 2016.

Wood County Human Services - WI Rapids
Public Assistance Collection Unit
Division of Health Care Access and Accountability